
TITLE 465 DEPARTMENT OF CHILD SERVICES

Administrative Rules Oversight Committee Notice
60 Day Requirement ([IC 4-22-2-19](#))
LSA Document #10-416

March 1, 2011

Senator R. Michael Young, Chair
Administrative Rules Oversight Committee
c/o Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Attn: Sarah Burkman

Re: LSA Document #10-416 – Proposed Rule Regarding Rate Setting for Residential Treatment Services Providers

Dear Senator Young:

On behalf of the Indiana Department of Child Services (DCS), I am submitting this notice to the Administrative Rules Oversight Committee in compliance with [IC 4-22-2-19](#), which requires an agency to begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule, with certain exceptions not applicable to this notice.

This Proposed Rule establishes a procedure for setting maintenance payments, administrative payments, and payments for other costs and services related to care and supervision of children placed in child caring institutions licensed under [IC 31-27-3](#), private secure facilities licensed under [465 IAC 2-11](#), and group homes licensed under [IC 31-27-5](#), on behalf of children for whom DCS is responsible for payment for foster care and related services under a juvenile court case, and who are placed in the facility with approval of a juvenile court or DCS.

There is no statute that specifically requires or authorizes DCS to adopt an administrative rule concerning payments to licensed residential treatment services facilities for care and supervision of children placed with those agencies for residential care. Indiana Code 31-25-2-7(a)(8) provides that DCS is responsible for "administering foster care services". Foster care is defined by [IC 31-9-2-46.7](#) as including living in a place licensed under [IC 31-27](#). Rules necessary to carry out the department's statutory duties under [IC 31-25](#) are authorized by [IC 31-25-2-18](#). Those statutory provisions were added to Title 31 by P.L.145-2006, effective July 1, 2006.

On January 1, 2009, the state of Indiana, through DCS, assumed fiscal responsibility for child welfare services expenditures, including payments for child placing agency foster care placements that were previously funded by county property tax levies. Before January 1, 2006, all rates and payments to residential treatment services providers were negotiated and determined by individual county offices then responsible for funding those payments through funds raised by county property tax levies. DCS entered into uniform master contracts with all residential treatment services providers in Indiana beginning January 1, 2006. Those contracts included individual program payment rates for the provider in 2006 and a procedure for redetermination of payment rates for subsequent calendar years. The contracts were succeeded by new four year contracts effective January 1, 2008, which continued the procedure for redetermination of the rates annually. However, for most providers the payments in effect through 2009 and payable under those contracts were based on the provider's requested adjustments of its previous rates. This resulted in a wide variation in rates charged by different providers for the same or similar residential treatment services and programs.

In 2009 DCS undertook a detailed analysis of provider costs and comparative rates charged by different providers for the same or similar residential treatment services. Based on that analysis, DCS notified its providers of the rates that it would accept for each program beginning January 1, 2010. However, after those notices were sent the Indiana Association of Residential Child Care Agencies (IARCCA) filed a lawsuit in U.S. District Court contending that the rates that DCS approved did not cover the cost of care and related administrative costs payable under Title IV-E of the Social Security Act for children in residential foster care facilities, and that the DCS rate determinations were equivalent to a "rule" that had not been promulgated under [IC 4-22-2](#). The court issued a preliminary injunction in January 2010 that prevented DCS from implementing any of the changes that it had approved in the 2009 rate schedules under the contracts. The court also stated that DCS should adopt a rule to

establish a methodology for determining the appropriate amount of foster care maintenance and administrative payments based on the Title IV-E cost components, including operational costs allowable and reasonable under applicable federal and state rules or policies. DCS is complying with that decision through this Proposed Rule.

The Notice of Intent to Adopt this [a] Rule was posted to the Indiana Register on June 23, 2010. The Proposed Rule was posted on August 25, 2010. DCS held a public hearing on the Proposed Rule on September 24, 2010, at which many interested persons appeared and submitted written and oral statements regarding the contents of the Proposed Rule. A subsequent public hearing was held on November 15, 2010, at which a few additional statements were submitted. DCS has considered and prepared written responses to the comments or statements it received at or following the public hearings and has made several amendments to the Proposed Rule that will be incorporated in the Final Rule.

Settlement negotiations ensued with IARCCA concerning the contents of the Proposed Rule, which have resulted in an agreement to the contents of the Final Rule. DCS is now ready to proceed with adoption of this rule as a Final Rule, subject to final approval by the Attorney General and Governor as provided under [IC 4-22-2](#). Rates and payments established under this rule will be effective no earlier than January 1, 2012.

If you need additional information concerning this subject, please do not hesitate to contact me at (317) 233-6547 or by e-mail as shown below.

Sincerely,

John Wood
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cc: Indiana Register
James W. Payne, Director, DCS
Jeffrey M. Lozer, General Counsel, DCS

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